

Supplemental Testimony of: **Adam J. Morman** on behalf of **Walton Maryland**

To: **Charles County Planning Commission & Charles County Board of Commissioners**

Regarding: **Watershed Conservation District ZTA 16-142 & ZMA 16-54**

February 13, 2017

RE: Maryland Department of Environment – 2009 Stormwater Regulations & Property Rights

Chapter 5. Environmental Site Design, of the 2009 Maryland Stormwater Design Manual, states that “The primary goal of Maryland’s Stormwater management program is to maintain after development, as nearly as possible, the predevelopment runoff characteristics. This is of importance, because if the existing land use includes a combination of open field and forest, the **AFTER** development stormwater runoff characteristics are intended to match or exceed that of the **PRE**-development land use. The State of Maryland is not encouraging the complete preservation of large acreages, rather, the state requires that plans are designed to:

1. Prevent soil erosion from development projects
 2. Prevent increases in nonpoint pollution
 3. Minimize pollutants in stormwater runoff from both new development and redevelopment
 4. Restore, enhance, and maintain chemical, physical, and biological integrity of receiving waters to protect public health and enhance domestic, municipal, recreational, industrial and other uses of water as specified by MDE.
 5. Maintain 100% of the average annual predevelopment groundwater recharge volume
 6. Capture and treat stormwater runoff to remove pollutants
 7. Implement a channel protection strategy to protect receiving streams
 8. Prevent increases in the frequency and magnitude of out-of-bank flooding from large, less frequent storms
- Protect public safety through the proper design and operation of stormwater management facilities

Chapter 5. Environmental Site Design.....Introduction

Section 5.0 Introduction

5.0.1 Background

The primary goal of Maryland’s stormwater management program is to maintain after development, as nearly as possible, the predevelopment runoff characteristics. Traditional stormwater management strategies treat runoff to mitigate adverse water quality and/or quantity impacts associated with new development. Designs applying these strategies often combine centralized structural practices for pollutant removal with channel erosion or flood control impoundments. These designs are less able to mimic predevelopment conditions because they focus on managing large volumes of polluted stormwater rather than treating runoff closer to the source.

A comprehensive design strategy for maintaining predevelopment runoff characteristics and protecting natural resources is available. This strategy, known as Environmental Site Design or “ESD,” relies on integrating site design, natural hydrology, and smaller controls to capture and treat runoff. This chapter provides the foundation to refocus stormwater design from centralized management to more effective planning and implementation of ESD.

Why should the State of Maryland have Approved Stormwater Regulations that are used to protect the environment and at the same time allow for growth to occur, if a local county is going to go far above and beyond the means necessary to protect the

environment, without sound scientific reasoning. The infrastructure is already in place in what was previously called the Development District, with much infrastructure already in place in what was also called the Deferred Development District. This is poor use of public tax payer funds. Walton would meet Local, State, & Federal regulations necessary to ensure protection of the environment when creating a new community. Why must all of the reasonable land rights be removed from the property to protect the environment when there are existing regulations to ensure this? Why must these land rights be taken without due process or representation of all facts?

Generally, between all the legislation that has been put in motion to save the Chesapeake Bay and the multitude of other local, state and federal regulations from the department of agriculture to the Environmental Protection Agency (EPA), there are standards to protect the waters within and around Charles County for just about every conceivable way possible.

Consider that the EPA is charged with regulating and enforcing the following [federal laws, regulations and executive orders](#):

- Clean Water Act (CWA)
- National Environmental Policy Act of 1969 (NEPA)
- Rivers & Harbors Appropriation Act of 1899
- Federal Agriculture Improvement and Reform Act of 1996 (Farm Bill)
- Endangered Species Act (ESA)
- Transportation Equity Act for the 21st Century (TEA-21)
- Coastal Wetlands Planning, Protection & Restoration Act (CWPPRA) EXIT
- North American Wetlands Conservation Act (NAWCA)

On the state level the [Maryland Department of the Environment](#) (MDE) is charged with regulating and enforcing the Section 5: 5B-03 of the Maryland Code: *"Protect the State's natural resources, including the fish and wildlife of the Potomac River, the Chesapeake Bay, and all other waters and waterways of the State."*

Laws and Regulations Governing the MDE Water Supply Program

Federal and State laws and regulations govern the activities of MDE's Water Supply Program, water utilities, and water users. Federal laws are passed by Congress and signed into law by the President. The Environmental Protection Agency (EPA) is then authorized by Congress to develop regulations.

In Maryland, laws are adopted by the Maryland General Assembly and signed into law by the Governor. The Maryland Department of Environment (MDE) develops regulations to implement the laws.

Maryland Statute <http://mgaleg.maryland.gov/webmga/fmStatutes.aspx?pid=statpage&tab=subject5>

- **Environmental Article 5, subtitle 5**
Governs appropriation and use of waters of the State.
- **Environmental Article 5-507(a)**
Provides MDE the authority to ensure water systems do not waste water.
- **Environmental Article 5-507(b)(1)**
Indicates that, in granting any permit to appropriate and use water, the Department may include any condition, term, or reservation concerning the character, amounts, means, and manner of the appropriation or use necessary to preserve control in the State and insure the safety and welfare of the people of the State.
- **Environmental Article 5-5B-03(3)**
States that it is the policy of the State to protect the State's natural resources, including the fish and wildlife of the Potomac River, the Chesapeake Bay, and all other waters and waterways of the State.
- **Environmental Article 9-205(e)(1)**
Provides authority for MDE to request per capita usage, water audits and unaccounted water data.

- **Environmental Article 9-221**
Provides authority for MDE to require improvements to water systems that do not provide adequate quantity or quality of water.
- **Environmental Article 9-405(b)(1)**
Provides authority for MDE to require infrastructure improvements of water systems that have exceeded or are likely to exceed their design capacity.
- **Environmental Article 9-512**
Provides MDE the authority to issue moratoriums on building permits if the water system capacity is not sufficient.
- **Environmental Articles 9-503 & 9-505**
Provides MDE the authority to require counties to maintain Water and Sewer Plans that ensure that sufficient water system capacities are available.

Code of Maryland Regulations (COMAR)

- Maryland Laboratory Regulations [26.08.05](#)
- Maryland Operator Regulations [26.06.01](#)
- Maryland Public Drinking Water Regulations [26.04.01](#)
- Maryland Water Appropriation Permit Regulations [26.17.06](#)
- Maryland Water and Sewerage Planning Regulations [26.03.01](#)
- Maryland Well Construction Regulations [26.04.04](#)

Code of Federal Regulations (CFR)

- National Primary Drinking Water Regulations
Congress authorizes EPA and other federal agencies to write rules and regulations that explain the critical details necessary to implement environmental laws. Below are some of the key rules and regulations that the Office of Water employs to implement key statutes and programs.
 - 40 CFR 141 - [Primary Drinking Water Regulations](#)
 - 40 CFR 143 - [Secondary Drinking Water Regulations](#)

Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) is the main federal law that ensures the quality of Americans' drinking water. Under SDWA, EPA sets standards for drinking water quality and oversees the states, localities, and water suppliers who implement those standards.

SDWA was originally passed by Congress in 1974 to protect public health by regulating the nation's public drinking water supply. The law was amended in 1986 and 1996 and requires many actions to protect drinking water and its sources: rivers, lakes, reservoirs, springs, and ground water wells. (SDWA does not regulate private wells which serve fewer than 25 individuals.) [Click here to find out more about the SDWA.](#)

No one can deny that between the Federal Government and the State of Maryland, the natural waterways here in Charles County and throughout the nation have benefited from much of the regulations that dictate how our aquatic resources can be used and maintained. Many will argue that there are more than enough laws, regulations and executive orders on the books.

The Troubling State of Private Property Rights Today

In this age of overregulation, distrust of government and visions of *sharing the wealth*, this is also an era where governments at all levels are strapped for cash and do not have the resources to outright acquire land. Therefore, whether they realize it or not local elected officials and their supporting bureaucracies have used policies of excessive regulation to gain control over the use of property without having to own it.

Right or wrong, many property owners here in Charles County not only fear that overregulation will impact their property, they have seen it happen with local downzonings of their properties, rezonings of adjoining properties, sweeping revisions to existing zoning regulation, among other governmental actions.

This is not a local phenomenon, but has been a movement on behalf of property rights groups across the country. Much has been written and fought over in legal battles all the way up to the Supreme Court regarding the topic of overregulation by government.

In Arizona things reached a peak in 2006 when state legislators passed into law the [Private Property Rights Protection Act](#), which “requires the government to reimburse land owners when regulations result in a decrease in the property’s value, and also prevents government from exercising eminent domain on behalf of a private party.”

Similar measures have been proposed in a number of states. If such a measure were ever brought before the General Assembly in Annapolis, it surely would never see the light of day.

The Goldwater Institute has written extensively on this topic in a February 2016 brief that expounds upon [the troubling state of private property rights today](#). Here’s an excerpt:

The Government can “take away property through regulations that prohibit owners from using, selling, or building on their land. Such restrictions block people from pursuing the purpose for which they bought the property—thus taking away their property rights just as much as an eminent domain condemnation does—but because the government does not technically take the title to the land, judges often hold that owners are not entitled to any ‘just compensation.’ People are therefore forbidden from using their property, but they are stuck with the purchase price, the taxes, the loan payments, and the possible liability if someone is injured on the land. Yet such regulations often destroy the property’s value, meaning the owner also cannot sell it.”

This is not to say that certain regulations and governmental actions are not justifiable, but it does place an extremely high burden upon our elected officials to stay in touch with their constituents, communicate through multiple channels and engage them more than ever before. Governmental staff must recognize how essential it is at their levels to learn and practice the same.

Conclusion

Most would agree that for all citizens of Charles County to have a plan for the proper care and use of the Mattawoman Creek and other important waterways is a good idea ... and this includes all those who own land in the proposed Watershed Conservation District. That stated, it seems at the very least the 2016 Comprehensive Plan that was adopted in July 2016 by the County Commissioners was in-fact NOT the compromise comprehensive plan proposed by County Planning Staff in August 2015 and presented to the public at Planning Commission hearings in October 2015. Nor is it the version of the plan commented upon by State of Maryland agencies in early 2015. Nor is it the plan **RECOMMENDED** by County Planning Staff as recently as February 8, 2016.

Not unlike the efforts that a real estate developer takes to engage in focus groups with the citizens of nearby communities to formulate plans to build homes and/or various types of commercial structures, laying the groundwork by seeking input and formulating plans from that is what lays the foundation for success and acceptance. While there will always be naysayers, vibrant plans are best developed by engaging stakeholders of all points of view, not just accepting ideologies from special interest groups of either side. The County should have done a better job notifying and educating property owners during the comprehensive plan process and again now during the proposed implementation of the Watershed Conservation District.

From the start, the implementation of the 2016 Comprehensive Plan and this proposed Watershed Conservation District was flawed and lacks valid support for the changes proposed. This is due to the hastily quick and deceiving methods used by County Leaders with strategic meeting dates set around holidays or lacking true notification of affected property owners and county tax payers. We can all see the level of opposition for the proposed Watershed Conservation District today. If the affected property owners in this proposed WCD knew that the changes were to occur as part of the Comprehensive Plan process, they would have opposed at that point as well, prior to implementation. Therefore, it is suggest that the Charles County Planning Commission and the Charles County Board of Commissioners:

- a. **REPEAL and REPLACE the 2016 adopted Comprehensive Plan with the 2015 Draft Comprehensive Plan proposed by County Planning Staff, prior to February 8, 2016.**
- b. **Require a Financial Impact Analysis of the 2016 Comprehensive Plan to be performed prior to recommendation of Text & Map Amendments to the Board of Commissioners.**
- c. **Remove the 1,160 Acres from the Watershed Conservation District and change the land designation to RM-PRD Residential Zoning**
- d. **Reinstate the Priority Funding Area Designation to the 1,160 acres**
- e. **Reinstate the Tier 2 Map Status to the 1,160 acres**
- f. **Designate the 1,160 acres as a TDR receiving area for Smart Growth**
- g. **Remove “Headwaters of the Port Tobacco” from the description of the Watershed Conservation District.**
- h. **If the Residential Zoning is not adjusted as part of the WCD Text/Map Amendments, the opportunity should remain to allow for an Optional Method of Development when properties are Zoned WCD that abuts or adjoins an existing or proposed public school site, provided that it satisfies certain requirements should be supplemented in the Zoning Ordinance** [Optional Method of Development is utilized by many jurisdictions when special circumstances exist which allows for Smart Growth to occur]